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Problems of the coexistence, from the year 2011, of two systems; Passive Classes and the General Social Security System, in the collective of justice officials for retirement purposes only

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Álvaro Muñoz Vela
Barcelona, 03/06/2024

ABSTRACT

This Final Degree Project begins by explaining, with a brief historical summary, the implications of the General and Special Social Security Regimes, specifically focusing on Mutualism and, in particular, Judicial Mutualism.

The current pension system has a duality that needs to be explained and differentiated between the General Social Security Regime and the Passive Classes, as they have different payers and different withholdings.

During the COVID-19 period, there was an attempt to incorporate the Passive Classes into the General Social Security Regime because it was believed that the more than 2 million public servants would increase the pension fund. However, the Constitutional Court annulled this political decision, not because it was implausible, but because it deemed it not an urgent measure, thus the Passive Classes remain within the welfare Mutualism system.

Nevertheless, I will analyze what I consider an injustice, as there coexist two types of retirement within the same body facilitated by two different regimes.

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1. Introduction

This paper is not focused on the issues of the pension system and what type of system would be most suitable to bear the burden of the increasing retired population in this country, nor on the sustainability of the administrative Mutualism of the Passive Classes, although there is currently much to discuss about the functionality of mandatory Mutualism outside the ordinary Social Security regime.

Practically always, both the General Social Security Regime and the special regimes have coexisted. No worker involved in any type of regime has a choice of system. Employees, with increasingly fewer exceptions, are covered by the General Social Security Regime, while the Passive Classes, career civil servants, are required to be covered by the corresponding Mutualism.

This parallelism has always led to friction among workers in the General Regime, as it was assumed that the Passive Classes had a labor advantage. This is true because civil servants do not contribute to unemployment benefits since they cannot be dismissed (except for very serious causes determined by law). However, this job security for civil servants is considered necessary to prevent them from becoming a political arm (this does not apply to directly appointed personnel, who are usually high-ranking officials and can be removed when the government changes).

However, my study does not delve into any of the aforementioned issues. It focuses on the double standard established by Royal Decree 1026/2011 regarding Judicial Mutualism. The retirement of the same group of civil servants, in this case, judicial officials who are part of the Passive Classes and receive the same salary, will be very different to the detriment of one group. Despite current laws, this makes me question whether it crosses a constitutional line.

2. Social Security Regimes

2.1. History

In Spain, concern for workers' welfare began in the late 19th century, leading to the creation of the Work Accidents Law in 1900. This was a time when various social insurances were emerging depending on the sector to which the worker belonged. To manage this complex system of insurances, the National Institute of Social Security was established 8 years later. Among the most important social insurances were the Workers' Retirement, Mandatory Maternity Insurance, Compulsory Unemployment Insurance, Health Insurance, and the Mandatory Old Age and Disability Insurance (SOVI). Starting in 1947, sector-specific labor mutualities appeared, initially aimed at supplementing labor protections. The problem lay in the multiplicity of these mutualities, which led to inequalities in many sectors of production.

To balance and eliminate inequality, a unitary model was implemented through the Social Security Framework Law in 1963, with the state taking over management and financing of the system. Following this, the General Social Security Law¹

was approved in 1966, and over the years, it was modernized and refined through various reforms. However, it wasn't until 1978 that a new management structure and the participation of social agents in Social Security were established through the Royal Decree-Law on institutional management of Social Security, health, and employment² based on the agreements reached in the Moncloa Pacts³.

¹ Decree 907/1966 of 21 April 1966 approving the first articulated text of Law 193/1963 of 28 December 1963 on the Bases of Social Security. «BOE» no. 96, of 22 April 1966.

<https://www.boe.es/buscar/doc.php?id=BOE-A-1966-6647>

² Royal Decree-Law 36/1978 of 16 November 1978 on the institutional management of social security, health and employment. «BOE» no. 276, de 18 11 October 1978.

<https://www.boe.es/eli/es/rdl/1978/11/16/36/con>

³ The Moncloa Pacts were a unanimous agreement between all the political parties represented in the Congress of Deputies, employers and trade unions, both economic and legal and political, which took place during the Spanish transition, after the death of the dictator Francisco Franco. The President of the Government at that time was Adolfo Suárez. It was so named because it was signed at the Moncloa Palace on 15 October 1977.

Obviously, this agreement came in compliance with Article 41 of the Spanish Constitution⁴, which states that *"The public authorities shall maintain a public Social Security system for all citizens, guaranteeing sufficient assistance and social benefits in situations of need, especially in cases of unemployment. Complementary assistance and benefits shall be voluntary."*, as well as Article 43, recognizing the right to health protection.

Over the years, it became necessary to adapt to new collectives, provide them with benefits, and align contribution bases to real wages. This required the computerization of all services to have all data jointly. The 1980s focused on creating benefit periods for pension calculation, expanding non-contributory coverage, and universalizing healthcare for all citizens.

After the Moncloa Pacts, the next significant agreement came in 1995 with the [Toledo Pact](#)⁵ signed and supported by all political parties. Additionally, the extension of working life was introduced, increasing the required years of contributions to 15 to qualify for a contributory pension.

As a result of the economic crisis in Spain since 2008, the pension system was reformed with new conditions to qualify for a contributory retirement, including raising the legal retirement age to 67 and increasing the calculation of the regulatory base to 25 years, due to the increase in the unemployment rate in Spain.⁶

2.2. Types

As a general rule, all workers must contribute to the Social Security system, an entity under the Ministry of Inclusion, Social Security, and Migration.

The objective is to ensure adequate protection against contingencies and situations outlined in Legislative Royal Decree 8/2015, of October 30, which approves the consolidated text of

⁴ Spanish Constitution. «BOE» no. 311, of 29 December 1978. [https://www.boe.es/eli/es/c/1978/12/27/\(1\)/con](https://www.boe.es/eli/es/c/1978/12/27/(1)/con)

⁵ The importance of this commission was the separation of contributory and non-contributory benefits. In fact, it is the modern basis of today's pension system.

⁶ Rosado Cebrián, B., & Domínguez Fabián, I. (2017). *Influencia de la parcialidad laboral en la viabilidad del sistema de pensiones español*.

the General Social Security Law⁷ (from now on, LGSS), articles 2 and 4, through the collaboration of both workers and employers. Within these contingencies, there is the right to receive both contributory and non-contributory pensions, although the latter will not be considered in the development of this work.

Consequently, the types of Social Security regimes are:

- I. As the majority factor, we have the General Social Security Regime, whose workers are defined in Article 136 of the LGSS. These workers, in general, are employees and assimilated individuals, as well as working partners of capitalist companies when the worker effectively controls the company, and working partners of labor companies. Currently, artists, bullfighting professionals, and commercial representatives are also included.
- II. On the other hand, we have the Special Regime for Self-Employed Workers (RETA), which includes any worker who, working on their own account or autonomously, is the owner of a business open to the public and carries out their professional activity regularly and onerously without being subject to an employment contract
- III. Other special regimes, but more minority, include the Special Regime for Coal Mining, where employees provide services to companies related to coal mining, and the Special Regime for Seafarers, whose workers are included in this special regime if they are listed as technicians or crew members, also being employees.
- IV. Public servants are subject to the Special Social Security Regime through the mechanisms of the Passive Classes Regime and Mutualism, administered by MUFACE, ISFAS, and MUGEJU (explained in section 4). As of January 1st of 2011, newly hired public servants are integrated into the General

⁷ Legislative Royal Decree 8/2015, of October 30, which approves the consolidated text of the General Social Security Law. «BOE» no. 261, of 31 of October 2015. <https://www.boe.es/eli/es/rdlg/2015/10/30/8/con>

Social Security Regime solely for pension purposes⁸ I will address this issue in more detail later on.

2.3. Possibility of receiving two pensions

Article 163.1 of the LGSS indicates that the same beneficiary cannot receive more than one pension from the general regime, unless expressly provided otherwise. Therefore, in case of incompatibility, the beneficiary must choose one of them.

However, on the same Social Security website regarding pensions⁹, the organization indicates that there is no incompatibility between pensions from different regimes. This means that there is no incompatibility for being a beneficiary of a pension for having been self-employed with a pension from employed work. But, to have that benefit of two pensions, there are contribution conditions.

To qualify for a contributory retirement pension, Article 205.1 of the LGSS indicates the age (1. a)) and the calculation of contribution periods (1. b)). This calculation must have a minimum of 15 years covered, of which at least 2 years must fall within the 15 years prior to obtaining the right to retirement.

The above requirements are also necessary for obtaining a self-employed retirement pension. This means that to receive two contributory retirement pensions, in addition to being from different regimes, a minimum of 15 years must have been contributed to each, and of those 15, two must fall within the last 15 years of working life.

⁸ For example, Art. 2 of Royal Decree 1026/2011 of 15 July 2011, approving the Regulations on Judicial Mutuality. «BOE» no. 186, of 4 August 2011. <https://www.boe.es/eli/es/rd/2011/07/15/1026/con>

⁹ Ministry of Inclusion, Social Security and Migration. (2024). Pensioners. <https://www.seg-social.es/wps/portal/wss/internet/Pensionistas/Pensiones/35102>

In any other case, such as not reaching the required contribution years for one of the two regimes or, if reaching it, not having contributed for 2 years within the last 15, the contributed years are not lost but added together to calculate the single pension from which one will benefit, and the pension will be based on whichever regime has more contribution years.

Another exception is the possibility of being a beneficiary of a non-contributory widow's pension along with a contributory retirement pension (Article 223 LGSS). It should be noted that all pensions have a limit regarding the maximum calculation. In 2024, the maximum amount for the sum of all pensions is €3,175.04 per month (without prejudice to extraordinary payments) or €44,450.5 per year. This is the maximum amount that can be received as a pensioner, whether with one or two pensions.¹⁰

3. Contributory Retirement

3.1. Types

Contributory retirements constitute a right for the worker as long as they meet certain requirements for it to be granted. There are several modalities of contributory retirement. In the event of the worker's death, the type of widow's or orphan's pension would apply. In cases of permanent incapacity of the worker, who due to their health cannot perform their work activity, they may obtain, depending on their condition, four types of incapacity pensions: partial, total, absolute, or severe disability.

Contributory retirement occurs when the worker reaches the legal age to acquire a benefit based on their contribution time. This benefit is lifelong (Article 204 LGSS). There are also various types of retirement:

- I. I. Ordinary retirement: Applies to anyone registered in the General Regime or a similar situation, who has contributed for a minimum period of 15 years, of which

¹⁰ *Ibid.*

two years must be within the last 15, and who has reached the age of 67, or 65 if they have contributed for 38 years and 6 months (Article 205.1 a) LGSS).

- II. Early retirement: Generally, early retirement is at the worker's discretion, provided they meet the requirements of Article 208 LGSS, including proving a minimum contribution period of 35 years. However, certain groups, due to the nature of their work or professional activity, have access to this right. To this end, Social Security analyzes each professional situation to determine the reduction coefficients for retirement age (Article 206 LGSS). Also, if a worker has a disability rating of 65% or higher, their retirement age may be reduced. There are other forms of early retirement whose cause is not attributed to the worker, as referred to in Article 207 LGSS.
- III. Partial retirement: Workers who meet the requirements for a retirement pension may request partial retirement if they reduce their working hours by a certain percentage, all regulated in Article 215 LGSS.¹¹

3.2. Regulatory Base

To calculate the regulatory base for the pension calculation in the General Regime, we must apply the formula contained in Article 209 of the LGSS, which, according to the same article, will be the result of dividing the sum of the contribution bases for the 324 months prior to the previous month by 378, with the conditions stipulated in the aforementioned article.

$$BR = \frac{\sum_{i=1}^{24} B_i + \sum_{i=25}^{348} \frac{B_i I_{25}}{I_i}}{378}$$

¹¹ Ortega, S. G. (2011). La jubilación ordinaria. *Temas laborales: Revista andaluza de trabajo y bienestar social*, (112), 133-164.

“Where:

BR = Regulatory Base.

B_i = Contribution base for the i-th month prior to the month preceding the event causing the pension (values will range from 25 to 348).

I₂₅ = General Consumer Price Index for the 25th month prior to the month preceding the event causing the pension.

The 24 discarded contribution bases B_i will take a value of 0 in the formula.

Where i = 1, 2,..., 348.”

Considering that with 15 years of contributions, 50% of the regulatory base is obtained, and 36 years and 6 months correspond to 100%, in accordance with the following tables provided by Social Security (which has been applied since 1st January 2013).

Table 1:

Percentage applicable depending on the number of years of Social Security contributions

PERCENTAGE – RETIREMENT – YEARS OF CONTRIBUTIONS								
PERIOD OF APPLICATION	FIRST 15 YEARS		ADDITIONAL YEARS				TOTAL	
	Years	%	ADDITIONAL MONTHS	COEFFICIENT	%	YEARS	YEARS	%
2013 to 2019	15	50	1 to 163	0.21	34.23			
			83 remaining	0.19	15.77			
	15	50	Total 246 months		50.00	20.5	35.5	100
2020 to 2022	15	50	1 to 106	0.21	22.26			
			146 remaining	0.19	27.74			
	15	50	Total 252 months		50.00	21	36	100
2023 to 2026	15	50	1 to 49	0.21	10.29			
			209 remaining	0.19	39.71			
	15	50	Total 258 months		50.00	21.5	36.5	100
From 2027	15	50	1 to 248	0.19	47.12			
			16 remaining	0.18	2.88			
	15	50	Total 264 months		50.00	22	37	100

Source: Table drawn up by the Ministry of Inclusion, Social Security and Migration

Besides the formula in Article 209 of the LGSS, which can also be applied for calculating the regulatory base, there's another option available to future pensioners since 2022, which involves dividing the contribution bases of the 300 months prior to retirement by 350 months, instead of 378 months. These 350 months result from the last 25 years plus the extra payments.¹²

3.3. Specialty of Passive Classes

The retirement deadlines of the General Social Security Regime do not correspond with those of the Passive Classes. However, as of January 1st of 2011, every newly hired civil servant is indeed integrated into the General Social Security Regime solely for pension purposes ([Article 2.2 of Royal Decree 1026/2011, of July 15, approving the Regulations of Judicial Mutualism](#))

As we have seen previously, the pension in the General Regime ranges between 50% and 100% depending on the years of contributions. This means that with the minimum requirement of 15 years of contributions, one would receive a pension equal to 50% of the regulatory base. On the other hand, civil servants under the Passive Classes do not have a regulatory base, but rather an allocation of regulatory pay depending on the category of the civil servant. Therefore, considering the table below from Article 31 of the State Passive Classes Law¹³, for the regulatory percentage, it ranges from 26.92% to 100%. Thus, a civil servant with 15 years of contributions would receive a pension of 26.92% of the regulatory pay compared to the 50% that would be received in the General Regime.

¹² Ministry of Inclusion, Social Security and Migration. (2024). Workers. <https://www.seg-social.es/wps/portal/wss/internet/Pensionistas/Pensiones/35102>

¹³ Legislative Royal Decree 670/1987, of April 30th, approving the consolidated text of the State Passive Classes Law. «BOE» no. 126, of 27 May 1987. <https://www.boe.es/eli/es/rdlg/1987/04/30/670/con>

Table 2:

Calculation of the base pay for the civil servants

Years of service	Base pay (%)
1	1,24
2	2,55
3	3,88
4	5,31
5	6,83
6	8,43
7	10,11
8	11,88
9	13,73
10	15,67
11	17,71
12	19,86
13	22,10
14	24,45
15	26,92
16	30,57
17	34,23
18	37,88
19	41,54
20	45,19
21	48,84
22	52,50
23	56,15
24	59,81
25	63,46
26	67,11
27	70,77
28	74,42
29	78,08
30	81,73
31	85,38
32	89,04
33	92,69
34	96,35
35 and more	100,00

Source: Article 31 of Legislative Royal Decree 670/1987, of April 30th, approving the consolidated text of the State Passive Classes Law

On the other hand, civil servants integrated into the Passive Classes before 2011 can retire with 100% of their benefits with 35 years of contributions, starting at the age of 60, although they could also do so with 30 years of service, but with 81.73% of the regulatory pay (Article 28.2 b) of Royal Legislative Decree 670/1987, of April 30th, approving the consolidated text of the State Passive Classes Law)

The difference between the regulatory base of the General Social Security Regime and the regulatory pay of the Passive Classes lies in the calculation method. The regulatory base in the General Regime encompasses the entire salary received. However, not all of the salary received by a civil servant is integrated into the regulatory pay approved each year in the General State Budgets. This means that there are salary supplements for civil servants that are not considered in the valuation for retirement. Subsequently, in section 5 of this paper, I will discuss this 'retirement gap,' not only between the General Regime and the Passive Classes, but also within the Passive Classes themselves, which, regarding judicial personnel in Royal Decree 1026/2011, of July 15, approving the Regulations of Judicial Mutualism, has created a significant difference among similar categories.

4. Special Regime of Civil Servants

4.1. Regulatory Relationship since the Late 19th Century

Public service is currently protected by Article 23 of the Spanish Constitution. Its origins can be traced back to French influence starting from the Napoleonic Constitution. However, the first regulation was enacted in 1827 with the so-called *Estatuto de López Ballesteros*, named after the Minister of Finance at that time. Although it was not a general statute for all civil servants, it did introduce the term "merit" for recruitment and promotion. Following this regulation for a few civil servants (those of the Royal Treasury), the *Estatuto General de Bravo Murillo* (President of the Council of Ministers in 1852) was

created in 1852. This is considered the first regulation to encompass the entire public service system, including access to the civil service, job categories, and the promotion system where seniority was prioritized as an objective criterion.¹⁴

After the Bravo Murillo Statute, the Organic Regulation of Civil Careers in Public Administration, known as the O'Donnell Statute, was approved¹⁵. This Statute is notable for recognizing job stability for public employees.

It is worth mentioning that there were several changes in the early 20th century regarding the categories of public employees as a result of political alternation. The ruling party was interested in having a large portion of public employees on their side, leading to changes and promotions of civil servants based on merit and capacity. These were very subjective measures that were convenient for the government in power¹⁶ such as the 1918 Statute¹⁷ enacted during the government of Antonio Maura, which emphasized job stability, modification of categories, and the salary that public employees should receive, as stipulated in the first section of the Statute. This Statute remained in effect until 1964 when the [1963 Civil Servants' Basic Law](#)¹⁸ was enacted. This new regulation transformed the civil service by creating the figure of general corps officials, centralizing their management and separating them from other types of personnel, with the introduction of free appointment.

Following the approval of the Spanish Constitution in 1978, which does not have a specific title for the civil service, but rather relies on certain articles like 23.2 in relation to article 14 about equal access to public office.

¹⁴ García-Armero, P. F. (2014). La función pública desde el siglo XIX. *Cadernos de Derecho Actual*, (2), 161-173. Page 2.

¹⁵ O'Donnell was the President of the Council of Ministers of Spain at the time the Royal Decree for the approval of the Statute was issued in 1866.

¹⁶ García-Armero, P. F., *op. cit.* p. 4

¹⁷ Approved by the Law on the Basis of the Status of Civil Servants in the Civil Administration of the State. «Gaceta de Madrid» no. 205, of 24 July 1918. <https://www.boe.es/buscar/doc.php?id=BOE-A-1918-3941>

¹⁸ Constituted as a result of the Decree 315/1964, of 7 February, approving the Law on Civil Servants of the State. «BOE» no. 40, of 15 February 1964. <https://www.boe.es/eli/es/d/1964/02/07/315/con>

It wasn't until the enactment of Law 6/1997 of April 14¹⁹ (which is now repealed), whose article 3 enumerates the principles of organization and functioning, including hierarchy, decentralization, and proximity to citizens, among others, adapting it to the provisions of the European Community.²⁰

Currently, the Law on urgent measures for labor market reform²¹ addresses the possibility of dismissal within the public sector (non-civil servant staff) as well as in departments where there is more personnel than required, and vacancies that occur due to retirement or transfer are not filled. This law, in its second additional provision, added a twentieth additional provision to the 1995 Workers' Statute in this regard. This provision has already been repealed in the new consolidated text of the Workers' Statute law²², where in its article 1.3, it excludes both public officials and staff serving public administrations from the scope of this law.

Following the previous historical data on the civil service, I will now focus exclusively on the mutualism of passive classes (because the rest of the personnel serving the Public Administration are integrated into the General Social Security Scheme), with MUFACE, ISFAS, and MUGEJU covering all civil servants in this country. Subsequently, I will concentrate on what I consider to be the main subject of my work through MUGEJU.

¹⁹ Law 6/1997, of 14 April 1997, on the Organization and Functioning of the General State Administration. «BOE» no. 90, of 15 April 1997. <https://www.boe.es/eli/es/l/1997/04/14/6/con>

²⁰ García-Armero, P. F., *op. cit.* p. 6-7

²¹ Law 3/2012 of 6 July 2012, on urgent measures for the reform of the labor market. «BOE» no. 162, of 7 July 2012. <https://www.boe.es/eli/es/l/2012/07/06/3/con>

²² Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law. «BOE» no. 255, of 24 October 2015. <https://www.boe.es/eli/es/rdlg/2015/10/23/2/con>

4.2. MUFACE

The *Mutualidad General de Funcionarios Civiles del Estado* (MUFACE) was created by Law 29/1975 of June 27²³, and its subsequent regulation through Decree 843/1976 of March 18²⁴ (both now repealed). This system initially ensured equal coverage for civil servants.

This law was repealed by Royal Legislative Decree 4/2000, of 23 June 2000²⁵, in order to unify the modifications that have been made over time. As a result, the special security regime for civil servants is governed by the aforementioned law, as well as by the legislation on passive classes, which is covered by the mechanisms of both the passive classes regime and the administrative mutual insurance scheme. However, civil servants hired after January 2011 are integrated into the General Social Security Scheme, for pension purposes only.

An important point is the contribution base which, according to Article 10 of Royal Legislative Decree 4/2000, indicates that it will be compulsory and will be established in the General State Budget Law as a regulatory credit, as well as the contribution percentage to be fixed each year.

MUFACE mutualists have agreements with Adeslas, Asisa, DKV, and Social Security. They can change their insurance provider every January. Additionally, each year, the collaborating entities can decide not to participate in the mutualists' system, which has happened with Sanitas.

²³ Law 29/1975 of 27 June 1975 on Social Security for State Civil Servants. «BOE» no. 155, of 30 June 1975. <https://www.boe.es/buscar/doc.php?id=BOE-A-1975-13887>

²⁴ Decree 843/1976 of 18 March 1976, approving the General Regulations on Administrative Mutualism. «BOE» no. 102, of 28 de April 1976. <https://www.boe.es/buscar/doc.php?id=BOE-A-1976-8695>

²⁵ Royal Legislative Decree 4/2000 of 23 June 2000, approving the revised text of the Law on Social Security for Civil Servants of the State. «BOE» no. 154, of 28 June 2000. <https://www.boe.es/eli/es/rdlg/2000/06/23/4/con>

4.3. ISFAS

Following the Law 193/1963²⁶, which established the principle of the existence of special schemes, the Social Institute of the Armed Forces (ISFAS) was created, under the Ministry of Defense, to manage and guarantee the benefits of this group. The Royal Legislative Decree 1/2000 of 9 June 2000²⁷, which repealed the previous regulations on Social Security for the Armed Forces, includes in article 3 the compulsory personnel of this special scheme.

Mutual members can change medical institutions every January. ISFAS has agreements with Adeslas, Asisa and the Social Security.

4.4. MUGEJU

The law on the Special Social Security Scheme for Civil Servants of the State, which was originally Law 29/1975 of 27 June 1975 (now repealed), established that the civil servants of the Administration of Justice would have social security under a mutual insurance scheme through a mutual society for civil servants in the Administration of Justice. This was developed in Royal Decree 16/1978²⁸ whose first article, point one, stated that: *“The personnel in the service of the Administration of Justice shall be subject to the special social security system established in this Royal Decree-Law”*, and article three named the mutual society *“Mutualidad General Judicial”*. This Royal Decree was also repealed by the current Royal Legislative Decree 3/2000 of 23 June 2000²⁹ in order, like MUFACE, to bring together the modifications made over the years.

²⁶ Approved by Decree 907/1966 of 21 April 1966 op.cit.

²⁷ Royal Legislative Decree 1/2000 of 9 June 2000, approving the revised text of the Law on Social Security for the Armed Forces. «BOE» no. 142, of 14 June 2000. <https://www.boe.es/eli/es/rdlg/2000/06/09/1/con>

²⁸ Royal Decree-Law 16/1978 of 7 June 1978 regulating social security for civil servants in the service of the Administration of Justice. «BOE» no. 137, of 9 June 1978. <https://www.boe.es/buscar/doc.php?id=BOE-A-1978-14530>

²⁹ Royal Legislative Decree 3/2000 of 23 June 2000 approving the revised text of the current legal provisions on the special Social Security Scheme for staff in the service of the Administration of Justice. «BOE» no. 154, of 28 June 2000. <https://www.boe.es/eli/es/rdlg/2000/06/23/3/con>

Thus, the Special Social Security Scheme is governed by this Royal Legislative Decree, whose scope of application is included in its article 2, with the coverage mechanisms being the Passive Classes Scheme and the Judicial Mutualism (art. 3 Royal Legislative Decree 3/2000, of 23 June), with the exception of staff who joined the scheme on or after 1 January 2011, who, for retirement purposes, are integrated into the General Social Security Regime.

Currently, MUGEJU has agreements with *Asisa*, *DKV*, *Mapfre*, *Nueva Mutua Sanitaria*, *Sanitas*, and *Adeslas*, as well as the Social Security. Like other mutual funds, members can change their medical provider each January.

4.5. Common Particularities

The contribution base of mandatory mutual funds or passive classes contrasts negatively with the contribution base of the General Social Security Regime, which consists of the total gross monthly salary indicated in the payroll. This means there is a significant difference between the retirement of a worker in the General Regime and that of a career civil servant. The latter's payroll includes a series of supplements that do not count towards the contribution base for retirement. Therefore, a 100% retirement pension for a General Regime worker would equal their salary, while for civil servants, the contribution base excludes these payroll supplements, resulting in a 100% retirement pension that is less than their actual salary.

An apparent benefit for mutualists compared to salaried workers in the General Social Security Regime is that the former pays 30% of the cost of medications, compared to 40%, 50%, or 60% for the latter, depending on their income.

The Ministry of Health publishes and updates the contribution to the payment of prescription drugs in the National Health System (SNS) which, depending on income, the percentage ranges from 40% to 60% for active personnel and from 10% to 60% for pensioners, with monthly ceilings. In the case of Mutualists it is 30% in all cases.

However, considering that the population using the most medication is the elderly, this apparent benefit becomes less significant. Upon retirement, mutualists continue to belong

to their mutual society and pay 30% of medication costs, while retirees with incomes below €100,000 per year in the General Regime pay only 10% of the medication price, with a monthly contribution cap.

Despite the potential convenience of eliminating mutual societies and incorporating all civil servants into the General Social Security Regime, the current system is not equipped to provide effective healthcare to over two million civil servants. Although from January 1, 2011, newly hired civil servants are included in the General Social Security Regime for retirement contributions, they still remain under administrative mutualism. This means that mutual societies will not disappear for them. However, the coverage provided by different health entities to civil servants is gradually decreasing due to inadequate funding, leading insurance companies to withdraw from these coverages.

Furthermore, there seems to be little interest from the State in integrating civil servants into the public system, mainly due to financial reasons. For example, according to Ana Rosado Cubero, an Economics Professor at the *Complutense University of Madrid*, "*the per capita expenditure of the covered population is substantially lower than the public healthcare per capita expenditure [...] resulting in a saving for the State exceeding 1,000 million euros*", solely with MUFACE.³⁰

The above situation leads many civil servants to opt for Social Security assistance, even though the advantage of mutualism was being able to choose an insurer, which typically offered significantly shorter waiting lists compared to the public system. However, civil servant mutualism and, in particular, passive class mutualism have been mandatory, meaning that civil servants did not have the choice of whether to join the mutual system or not.

While the primary complaint from various insurance companies about partnering with mutual societies is the lack of adequate budget (mutual societies offer insurers less money than private fees), there are also other factors influencing their decision to withdraw from mutualism:

³⁰ Rosado Cubero, A. I., Hernández Estrada, A., & Juárez Boal, M. S. (2024). El mutualismo administrativo: modelo predictivo sobre la elección de los mutualistas de su modelo sanitario y escenarios futuros. p. 72.

- I. All foreign residents coming to Spain are required to obtain insurance. This means that various insurance companies here have a substantial number of clients, in addition to the usual national clients who, despite having Social Security, also choose to have private insurance mainly to avoid long waits for scheduling any test or operation.
- II. The latest policies of partial privatization of the public Social Security system have led to significant delays in getting appointments with a family doctor, which can extend to two or three weeks. This situation causes more and more people to decide to pay for private insurance due to the current insecurity and inefficiency of our public system.

All of this means that as insurance companies acquire more and more clients, the coverage of civil servants within mutualities is no longer attractive, leading insurers to decide not to compete. Consequently, the number of insurers and contracted hospitals is gradually decreasing. For instance, a civil servant may have chosen *SegurCaixa Adeslas*, which includes the *Quirón* Group in its private healthcare coverage. However, for justice officials, *Quirón* may not be included in their coverage.

Having said that, there must be a significant change within the mutualities. A crucial aspect of this change involves increasing their funding to match the gap with public spending. This would make the insurance rates viable for insurers, who currently have an ambivalent stance regarding coverage. On one hand, they incur losses, but if mutualism were to cease, it would lead to the closure of many private hospitals.³¹

Another common and significant factor for retirement purposes is Royal Decree-Law 13/2010, of December 3rd ³², which establishes that civil servants who entered service after January 1, 2011, will be integrated into the General Social Security System for retirement purposes, while maintaining coverage through their mutualities for other purposes.

³¹ Ibidem. p. 95-97

³² Royal Decree-Law 13/2010, of 3 December, on fiscal, labor and liberalization measures to promote investment and job creation. «BOE» no. 293, of 3 December 2010.
<https://www.boe.es/eli/es/rdl/2010/12/03/13/con>

5. Personnel serving the judicial bodies

5.1. Bodies

Book VI of the Organic Law of the Judiciary³³ regulates the body of officials serving the Administration of Justice.

which are mentioned in Chapter I of Title I of the aforementioned Book VI: “*Corps of Forensic Physicians, Officials of the National Institute of Toxicology and Forensic Sciences, Process and Administrative Management, Technical Specialists of the National Institute of Toxicology and Forensic Sciences, Process and Administrative Processing, and Procedural Assistance, Laboratory Assistants, and other personnel serving the Administration of Justice*”.

I will focus on officials of procedural and administrative management, procedural and administrative processing, and procedural assistance. Although all other officials are equally affected by being included in the Passive Classes, it would not affect their retirement since they would receive the legal maximum (lawyers, judges, prosecutors, etc.)

According to Fernando Flores Giménez, a professor of Constitutional Law at the University of Valencia, in his presentation on the “*territorialización de la organización judicial: realidad y posibilidades*”³⁴ he already indicates that the current judicial system is unfinished, as the concept of local justice, aimed at relieving the workload of lower courts and simplifying processes for minor disputes, has been put on hold for a better opportunity.

It's clear that, aside from judges and judicial officers, the rest of the personnel have been used as bargaining chips for the autonomous communities to manage them as autonomous bodies, despite their national character.³⁵

³³ Organic Law 6/1985 of 1 July 1985 on the Judiciary. «BOE» no. 157, of 2 July 1985.

<https://www.boe.es/eli/es/lo/1985/07/01/6/con>

³⁴ Giménez, F. F. (2007). La territorialización de la organización judicial: realidad y posibilidades. *Cuadernos de Derecho Público*.

³⁵ Ibidem, p. 108

Thus, "the remuneration of judicial administration personnel, while funded by the Autonomous Communities with transferred competences, is set by different entities"³⁶. This means that while the Ministry of Justice, or rather, the State, sets the basic salaries, the Autonomous Communities establish specific supplements.

Therefore, a civil servant from the national body, for example, in procedural management, who has passed the national competition for that position, can transfer to one or another community and, consequently, may have a higher or lower salary depending on the Autonomous Community in which they work. In conclusion, the same national body with the same national competition, does not imply, for the same work, the same salary. Professor Fernando Flores Giménez refers to this as "singular competence distribution".³⁷

This is the most visible change in the transfer of personnel management to the Autonomous Communities since 2004. The mentioned career officials serving the Administration of Justice, known as judicial officers, judicial assistants, and judicial agents, underwent the Order JUS/1263/2004³⁸ and were renamed as procedural and administrative managers, with the requirement of holding a degree such as a University Diploma, Technical Engineer, Technical Architect, or equivalent (previously, officers were only required to have a high school diploma). As for the assistants, they were integrated into the Body of Procedural and Administrative Processing, requiring them to have a high school diploma. And the Judicial Agents became part of the Auxiliary Judicial body.

The same Order stipulated that career officials who did not have the corresponding qualification would also be integrated into these bodies.

Through Order JUS/2296/2005³⁹ criteria were established for selecting interim civil servants who, meeting the requirements and qualifications to fill vacancies not occupied by career officials, could be integrated into a job pool for each body to select them according

³⁶ Ibidem, p.109

³⁷ Ibidem.

³⁸ Order JUS/1263/2004, of 18 March, regulating the procedure for the integration of civil servants in the service of the Administration of Justice into the Corps and Scales created by Organic Law 19/2003, of 23 December, amending Organic Law 6/1985, of 1 July, on the Judiciary. «BOE» no 157, of 2 July 1985. <https://www.boe.es/eli/es/o/2004/03/18/jus1263/con>

³⁹ Order JUS/2296/2005, of 12 July, on the selection, proposal and appointment of interim civil servants to cover posts of civil servants in the bodies in the service of the Administration of Justice. «BOE» no. 169, of 16 July 2005. <https://www.boe.es/eli/es/o/2005/07/12/jus2296/con>

to the needs of vacant positions. Unlike permanent officials, following the transfer of management to the Autonomous Communities and the change in the name of each body and qualifications, interim civil servants covering positions left vacant by career officials who did not have the corresponding title were dismissed from their positions. Although in terms of economic compensation, both permanent and interim officials logically receive the same salary under equal conditions with the same rights to supplements and seniority bonuses, they do not fall under the same Social Security coverage regime. Career officials corresponding to the passive classes belong to the sphere of the Ministry of Public Administration in terms of pensions, while interim staff belong to the General Regime of Social Security. The substantial change lies in the fact that, as of Royal Decree 1026/2011, of July 15, which approves the Regulation of Judicial Mutualism, career officials are also integrated into the regime of Passive Classes and Judicial Mutualism, but only for pension purposes they are integrated into the General Regime of Social Security (art. 2). This significant change needs to be analyzed to see how it fits not only within legality but also within a constitutional perspective, considering that none of the regulations are optional.

Every year, a Royal Decree is published regarding the revaluation of pensions for both the Social Security system and Passive Classes. For the year 2023, I will refer to Royal Decree 1058/2022, of December 27th⁴⁰.

Title III refers to pensions under the Passive Classes State System, detailing the revaluation of these pensions, setting the maximum limit, as well as the formula for calculating the pension value limit. Additionally, it establishes the supplements received in the payroll that may or may not be included in the retirement pension. These supplements can be reduced or eliminated to avoid exceeding the maximum annual income limit. These limits are set annually in a table of minimum and maximum amounts, establishing, for example, in 2023, a maximum annual income of 22,140.80 euros. This table has been published for the year 2023 in Royal Decree 1058/2022, of 27 December, on the revaluation of Social Security

⁴⁰ Royal Decree 1058/2022 of 27 December on the revaluation of the pensions of the Social Security system, of the pensions of the Pensioners' Pension Scheme and of other public social benefits for the financial year 2023. «BOE» no. 311, of 28 December 2022. <https://www.boe.es/eli/es/rd/2022/12/27/1058>

system pensions, pensions of the Pensioners' Pension Scheme and other public social benefits for the financial year 2023, article 23.3

The Royal Decree-Law 8/2023, dated December 27th ⁴¹, in its article 78, increases in 2024, compared to the year 2023, both contributory pensions of the Social Security system and those of the Special Regime of Passive Classes by 3.8%.

Annex II of the aforementioned decree articulates the regulatory assets for the determination of pensions for the Passive Classes by means of a table that has been modified for this year, 2024, with the 3.8% increase in accordance with Royal Decree Law 8/2023 of 27 December 2023 and is made up as follows:

Table 3:

Base pay for 2024

Grupo / Subgrupo EBEP	Haber regulador 2024
A1	49.914,06 €
A2	39.283,61 €
B	34.399,17 €
C1	30.170,49 €
C2	23.869,85 €
E (Ley 30/84) y Agrupaciones profesionales (EBEP)	20.350,96 €

Source: Central Sindical Independiente y de Funcionarios (CSIF)

⁴¹ Royal Decree-Law 8/2023 of 27 December adopting measures to deal with the economic and social consequences of the conflicts in Ukraine and the Middle East and to alleviate the effects of the drought. «BOE» no. 310, of 28 December 2023. <https://www.boe.es/eli/es/rdl/2023/12/27/8/con>

Note: I am referring the following groups: A2 are procedural and administrative management bodies. C1 are procedural and administrative processing bodies and C2 are procedural assistance bodies.

5.2. Differentiation between civil servants before and after 2011. Royal Decree 1026/2011

The Royal Decree-Law 15/2020⁴², among many topics entirely unrelated to Passive Classes, amended the consolidated text of the State Passive Classes Law in its first final provision. It also introduced the Passive Classes regime into ordinary legislation and modified its financing, transferring the management to Social Security. However, everything related to Passive Classes was annulled by the Constitutional Court following an appeal filed by the Popular Party.⁴³ The ruling did not actually annul the various provisions for being unconstitutional per se but rather considered that the measures were so significant that they could not be approved as urgent matters. Instead, they needed to be discussed and agreed upon in the appropriate forums and not through a Royal Decree-Law.

The Constitutional Court's final explanation, contained in the sixth legal basis, is as follows:

“This Court does not find that the contested provisions have any meaningful connection, in accordance with our settled doctrine, with the common or general cause of extraordinary and urgent need that led to the adoption of Royal Decree-Law 15/2020. It is clear that there is no link of adequacy between the situation defined by the Government, which constituted the generic enabling conditions for Royal Decree-Law 15/2020, and the specific regulation contained in the provisions thereof which are challenged in the present action, aimed at making legislative amendments to the regulation of the Passive Classes Regime in order to bring it into line with the administrative reorganisation decision provided for in

⁴² Royal Decree-Law 15/2020 of 21 April on urgent complementary measures to support the economy and employment. «BOE» no. 112, of 22 April 2020. <https://www.boe.es/eli/es/rdl/2020/04/21/15/con>

⁴³ STC No. 111/2021, Constitutional Court, Plenary, (Appeal of unconstitutionality 2295/2020) of 13 May 2021. ECLI:ES:TC:2021:111.

Royal Decree 2/2020 of 12 January, consisting in the transfer of the management of that social security scheme to the Ministry of Inclusion, Social Security and Migration (through the INSS). It is hard to see what reasonable connection there could be between the social and economic consequences of the COVID-19 pandemic and the administrative reorganisation of the Passive Classes Regime”.

This means that the civil servants under the State Passive Classes, including judicial officials from the aforementioned bodies of procedural management, procedural processing, and judicial assistance, while being part of the special Social Security system under Royal Decree 1026/2011 (in line with Royal Decree-Law 13/2010), are subdivided into two different groups for retirement purposes. Despite having the same conditions as mutualists (choice of health insurance or Social Security) and other common benefits in terms of benefits, upon retirement, some will be subject to the provisions of the Legislative Royal Decree 670/1987, of April 30th, approving the consolidated text of the State Passive Classes Law, and others (those who entered after 2011) will be subject to the General Social Security System.

As explained in previous sections, civil servants under the Passive Classes regime do not have a regulatory base equivalent to their full salary; instead, they have a regulatory amount determined annually in the General State Budget. This regulatory amount is lower than the salary received, resulting in a reduction in the retirement pension compared to the active salary.

Civil servants of the same category who joined after January 1st of 2011 are also included in the Passive Classes at the assistance level, meaning they remain within the Mutualism system with a choice of insurance entities. However, for retirement purposes, they are part of the General Social Security System. This means that a regulatory amount will not be applied to them; instead, their entire active salary will be taken into account to calculate the regulatory base.

This difference has its pros and cons. For example, career civil servants who joined before January 1, 2011, can retire at 60 if they have 30 years of contributions, or even at 60 with 35 years of contributions and receive 100% of their pension (as already seen in section 3.2 of this paper). However, once retired, they will continue to pay for medications. Career

civil servants who joined after January 1st of 2011, must retire in accordance with the General Social Security Law. Their retirement amount will be significantly higher, and they will be exempt from paying for medications or the contributions required from other pensioners.

It is also true that contributions differ between civil servants under the Passive Classes regime who joined before 2011 and those who joined afterward. However, this is not attributable to the civil servant since the contribution percentage is not voluntary, and the salary is the same for both groups. Therefore, this situation is not comparable to the retirement issues of self-employed workers who can choose their Social Security contribution rate and thus can opt to pay the minimum or maximum throughout their professional career. ⁴⁴

6. Potential unconstitutionality of pension calculation for same Civil Servants before and after Royal Decree 1026/2011

After Royal Decree 1026/2011, the Royal Decree-Law 15/2020, attempted to integrate the Passive Classes regime into the General Social Security System so that this entity could manage pensions in their entirety. These provisions were challenged before the Constitutional Court, which annulled part of this Decree for violating Article 86.1 of the Spanish Constitution. The court ruled that this Royal Decree-Law did not fall within the scope of "extraordinary and urgent necessity," without assessing whether the measures to include civil servants in the General Social Security System were appropriate or not. ⁴⁵

Following this declaration of unconstitutionality, I will continue with the provisions of Royal Decree 1026/2011, which does not incorporate the Passive Classes into the General Social Security System, but only applies to the retirement of civil servants admitted from 2011 onwards.

⁴⁴ Manuel Rodríguez Martínez (2021). El Régimen de Clases Pasivas y el Régimen General de la Seguridad Social. Diferencias en la prestación de jubilación.

⁴⁵ STC No. 111/2021 op.cit.

Justice officials integrated before 2011 have been legally claiming the option to choose the contributory system that benefits them the most. However, these requests have been consistently dismissed in court.

An example of these is the judgment of the Superior Court of Justice of Madrid dated January 25th of 2024⁴⁶, with Justice Santiago de Andrés Fuentes presiding, in which the civil servant requested the recognition of the right to choose to join the General Social Security Regime. She argued that the differences in retirement benefits between the pre-2011 regime and the General Social Security Regime would result in a monthly disadvantage of between 300 and 1,000 euros for those under the Passive Classes regime (Legal Basis First b) 2nd argument 3rd). The magistrate, in the fourth paragraph of the Legal Basis section, states the following:

"The recognition of the right of choice that the claimant is requesting would only be possible if, after raising the corresponding question, the Constitutional Court declared that the assignment to the Passive Classes Regime, without the possibility of opting for the General Social Security Regime, is contrary to the Constitution, specifically the principle of equality enshrined in Article 14."

Furthermore, the magistrate notes in the following paragraph another reason for ultimately rejecting the claim: the discrepancy in pension amounts has not yet been substantiated since the claimant has not yet retired.

The judgment points out that neither judicially nor administratively can the regulation be annulled, as the law itself differentiates between Passive Classes officials and other officials appointed after 2011. It also suggests that annulment would be possible only if the difference existed within the same group. At this point, it seems that the regulation is legally sound. However, if we consider the parallelism the magistrate draws regarding the principle of equality, it opens the possibility of arguing that this right of choice might violate the principle of equality under Article 14 of the Spanish Constitution.

⁴⁶ STSJ M 852/2024 (Contentious Chamber, 7th Section), 25 January 2024 (appeal 620/2021). ECLI:ES:TSJM:2024:852

7. Conclusions

Certainly, in the Royal Decree 1026/2011, the period set from 2011 could be considered unconstitutional because in the Constitutional Court ruling (Appeal of unconstitutionality 2295/2020 already mentioned) which annulled part of the Royal Decree-Law 15/2020 of 21 April, and gave management of the State Passive Classes to the National Institute of Social Security (INSS), it was not annulled for being unconstitutional *per se*, but because it was presented as an urgent measure, which the Constitutional Court did not consider to be the case. Consequently, from this constitutional reading, one can conclude that the measure to include Passive Classes in the General Social Security Regime is not unconstitutional and, therefore, the opposite measure, namely, dividing the civil service of the same category into two different forms of contribution and retirement, may be unconstitutional under the principle of equality of Article 14 of the Spanish Constitution.

In this regard, the dissenting opinion formulated by the President of the Constitutional Court, Mr. Cándido Conde-Pumpido, indicates the importance of the effective integration of the Passive Classes Regime into the Ministry of Inclusion, Social Security, and Migration, that is, full integration into the INSS.

On the other hand, stating that since the actual retirement of civil servants from new entry from January 1st of 2011, has not occurred, and therefore, not seeing the differential factor with Passive Classes civil servants, it is not possible to address the substance of the matter indicates that the judge has not taken into account neither the regulatory bases nor the regulatory basis that could have been confronted even if it has not occurred. And that confrontation of retirement within the same bodies, but in different regimes, does represent a breach of constitutional equality.

In conclusion, it is absurd to think that the same body of civil servants, who are obligatorily linked to Mutualism, are considered different bodies because from a certain date their contributions are transferred to the General Social Security Regime. The inequality thus created is considered unconstitutional. Even more so when the right of choice has not been granted to Passive Classes officials, as was granted to the group of career civil servants from the former Labor Universities, who, classified under the General Social Security

Regime, were given the option to join the State Passive Classes Regime upon retirement. These are inconsistencies that should be resolved not only in the field of labor jurisdiction but also and previously in the constitutional sphere.⁴⁷

As a final note, in reference to the right of choice in the mentioned judgment of the Superior Court of Justice of Madrid, and in communication with the STAJ trade union, the legal service informs me that following the numerous judgments of the various courts denying the right of choice to the Passive Classes, they have no choice but to raise this issue to the Court of Justice of the European Union.

⁴⁷ MUFACE. (n.d.). Mutualidad General de Funcionarios Civiles del Estado. Retrieved from https://www.muface.es/muface_Home/mutualistas/mutualistas.html

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